

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 27.60 and 28.59
Title 14, California Code of Regulations
Re: Surfperch Bag Limit

- I. Date of Initial Statement of Reasons: October 21, 2005
- II. Date of Pre-adoption Statement of Reasons: December 20, 2005
- III. Date of Final Statement of Reasons: February 17, 2006
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 9, 2005
Location: Concord, CA
 - (b) Adoption Hearing: Date: February 3, 2006
Location: Sacramento, CA

V. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

The Commission took action at its February 3, 2006 meeting to increase the surfperch bag limit. Accepting the Department's recommendation, the Commission increased the limit from five to 20 surfperch in the aggregate, with not more than 10 surfperch of any one species. This limit is separate from the 20-fish daily limit of shiner surfperch.

This increase to the bag limit, however, does not apply to waters of the San Francisco and San Pablo bays, where the limit will remain five fish in the aggregate, not including shiner surfperch.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

- (1) Mr. Bob Strickland, United Anglers, oral comments made at December 9, 2005 Commission meeting: supported the Department's recommended bag limit increase. Mr. Strickland restated his support at the February 3 adoption hearing.

Response:

Support for proposal noted. The Department proposes to increase the surfperch bag limit to 20 surfperch in the aggregate, with not more than 10 of any one species, excluding shiner surfperch. However, the Department recommends maintaining the existing five-fish aggregate bag limit in San Francisco and San Pablo bays, excluding shiner surfperch. The Department also does not recommend establishing a separate bag limit for redbtail surfperch, but supports maintaining the minimum size limit that is currently established for this species.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The existing regulations would restrict recreational fishermen from increasing their daily bag limit.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. There is likely to be some positive but negligible impact to sportfishing tackle wholesalers and manufacturers resulting from the regulatory change allowing for increased take of surfperch.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed regulations will not directly result in the creation or elimination of jobs or businesses in California. There is likely to be some positive but negligible expansion of existing businesses for tackle wholesalers, tackle manufacturers, and others that provide goods and services to sportfishermen.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

Existing regulations of Section 27.60 and Section 28.59 of Title 14, CCR, provide for a recreational daily bag limit of five surfperch of any species in combination, excluding shiner surfperch.

The proposed regulatory change would increase the daily recreational bag limit for surfperch. The Commission will consider a daily bag limit between 15 and 20 surfperch in combination of species, excluding shiner surfperch. Not more than 10 surfperch may be of any one species.

The Commission will also consider a special sub-limit for redbait surfperch of five fish. However, the Department does not have biological information that suggests specific protection for redbait surfperch is warranted. The Department recommends that the Commission not adopt this special sub-limit for redbait as it would add unwarranted complexity to the regulations without a reasonably compelling need.

The new bag limits would apply in all marine waters statewide, except for San Francisco Bay and San Pablo Bay, where the daily bag limit will remain at five fish in combination.

Minor changes to the existing language of Section 28.59, Title 14, CCR, are proposed to improve clarity and enforceability.

The Commission took action at its February 3, 2006 meeting to increase the surfperch bag limit. Accepting the Department's recommendation, the Commission increased the limit from five to 20 surfperch in the aggregate, with not more than 10 surfperch of any one species. This limit is separate from the 20-fish daily limit of shiner surfperch.

This increase to the bag limit, however, does not apply to waters of the San Francisco and San Pablo bays, where the limit will remain five fish in the aggregate, not including shiner surfperch.

Regulatory Language

Section 27.60, Title 14, CCR, is amended to read:

§27.60. Limit.

(a) General. No more than 20 finfish in combination of all species with not more than 10 of any one species, may be taken or possessed by any one person except as otherwise provided or as defined in subsection (e) below or in Section 195. (See Sections 27.70 through 28.62 for minimum size limits and poundage restrictions for certain species.)

(b) Within the overall bag limit of 20 fish with not more than 10 of any one species, the following special limits apply:

(1) Federal groundfish (as defined in Section 1.91) and species associated with federal groundfish (limited to greenlings of the genus *Hexagrammos*, California sheephead, and ocean whitefish):

(A) Rockfish, Cabezon, and Greenling complex (RCG complex), as defined in subsection 1.91(b) — 10 fish in total (also see Sections 27.82, 28.28, 28.29 and 28.55). Within the 10-fish RCG complex limit, the following sub-limits also apply: cabezon — one fish, greenlings of the genus *Hexagrammos* — one fish, bocaccio — one fish, except in the Northern Rockfish and Lingcod Management Area (as defined in subsection 27.82(a)) where the sub-limit is two fish, canary rockfish — zero fish, cowcod — zero fish, and yelloweye rockfish — zero fish.

(B) For species of federal groundfish that are not part of the Rockfish, Cabezon, and Greenling complex (RCG complex, see subsection (a)(1)(A) above), the following special limits apply: California scorpionfish — five fish (see Sections 27.82 and 28.54), leopard shark — three fish (see Section 28.56), lingcod — two fish (see Sections 27.82 and 28.27), and soupfin shark — one fish. See subsection (d) below for federal groundfish species with no limits.

(C) For species associated with federal groundfish that are not part of the Rockfish, Cabezon, and Greenling complex (RCG complex, see subsection (a)(1)(A) above), the following special limits apply: California sheephead — five fish (see Section 28.26).

(D) Bag and possession limits for all species of federal groundfish (as defined in Section 1.91, including rockfish, cabezon, lingcod, and California scorpionfish), greenlings of the genus *Hexagrammos*, California sheephead, and ocean whitefish may be changed during the year or in-season by the department under the authority of subsection 27.82(e). The department will provide a news release notifying the public 10 days in advance of a change to daily bag limits for these species made under the authority of subsection 27.82(e). Anglers and divers are advised to check the current rules before fishing. The latest fishing rules may be found on the department's website at: www.dfg.ca.gov/mrd/, or by calling (831) 649-2801 for recorded information, or by contacting a department office.

(2) For species other than federal groundfish (as defined in Section 1.91) and species associated with federal groundfish (limited to greenlings of the genus *Hexagrammos*, California sheephead, and ocean whitefish), within the overall bag limit of 20 fish, the following special limits apply:

<i>Zero fish (Prohibited)</i>	<i>One fish</i>	<i>Two fish</i>	<i>Three Fish</i>	<i>Five Fish</i>
giant (black) sea bass (except as provided in Section 28.10)	white sturgeon (see Section 27.90)	salmon (except as provided in Section 27.80)	trout taken from ocean and bays (see Section 27.70)	surfperch—five fish in the aggregate of all species, except for shiner surfperch <u>under 27.60(c) below In San Francisco and San Pablo bays only, the surfperch daily bag limit is five fish in the aggregate. See Section 28.59 and subsection 27.60(c) for other surfperch bag limits.</u>
Garibaldi (see Section 28.05)	Pacific halibut (see Section 28.20)	striped bass (see Section 27.85)	white seabass (except as provided in Section 28.35)	California halibut (except as provided in Section 28.15)
gulf grouper (see Section 28.12)	marlin (see Section 28.50)	broadbill swordfish (see Section 28.40)		
broomtail grouper (see Section 28.12)	sevengill shark	blue shark		
white shark (see Section 28.06)	sixgill shark	thresher shark		
green sturgeon (see Section 27.92)		shortfin mako shark		

(c) In addition to the overall bag limit of 20 fish, and special limits in subsection (b), the following special limits apply: ~~Shiner surfperch—20.~~

(c) Special daily bag limits for shiner surfperch.

(1) The special limit for shiner surfperch is 20, which may be taken or possessed in addition to the overall daily bag limit of 20 finfish defined in subsection 27.60(a) and the special limits defined in subsection 27.60(b).

(d) There is no limit on the following species: Albacore, anchovy, bluefin tuna, grunion, jacksmelt, topsmelt, Pacific butterfish (pompano), queenfish, sanddabs, skipjack, jack mackerel, Pacific mackerel, Pacific staghorn sculpin, round herring, Pacific herring and Pacific sardine. There is no limit on the following species of federal groundfish: petrale sole, Pacific sanddab, and starry flounder.

(e) Boat limit. When two or more persons that are licensed or otherwise authorized to sport fish in ocean waters off California or in the San Francisco Bay District, defined in Section 27.00, are angling for finfish aboard a vessel in these waters, fishing by all authorized persons aboard may continue until boat limits of those finfish identified under subsections (a) through (c) above are taken and possessed aboard the vessel as authorized under this section or Section 195, Title 14, CCR.

(1) The authorization for boat limits aboard a vessel does not apply to fishing trips originating in California where fish are taken in other jurisdictions.

(2) A boat limit for a species or species group identified in subsections (a) through (c) above is the number of persons aboard a vessel that are licensed or otherwise authorized to sport fish in ocean waters off California, or in waters of the San Francisco Bay District, (see special conditions of Section 195, Title 14, CCR, applicable to operator and crew members of vessels licensed pursuant to Fish and Game Code 7920.) multiplied by the individual daily bag limit authorized for a species or species group in those waters. With the exception of species listed in subsection (d) above, the total fish aboard a boat may not exceed the aggregate per-person daily bag limit of 20-fish in combination of all species times the number of anglers licensed or otherwise authorized to sport fish aboard the vessel. It is unlawful to exceed the boat limit at any time.

(3) All persons aboard a vessel may be cited where violations involving boat limits are found, including, but not limited to the following violations:

(A) Over limits

(B) Possession of prohibited species

(C) Violation of size limits

(D) Fish taken out of season or in closed areas.

(4) Upon completion of a fishing trip aboard a vessel, each licensed angler or person otherwise authorized to sport fish may not possess more than the individual daily bag and possession limits defined in Section 1.17, Title 14, CCR and in subsections (a) through (c) above. For purposes of this section, a trip is completed at the time a person disembarks from a vessel and individual possession limits apply. Special boat limit provisions apply to persons fishing aboard commercial passenger fishing vessels reporting pursuant to Section 195, Title 14, CCR.

(5) Species or species groups for which no daily bag limit exists under subsection (d) above are not counted as part of a boat limit.

NOTE:

Authority cited: Sections 200, 202, 240, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 205, 210, 7071 and 7120, Fish and Game Code.

Section 28.59, Title 14, CCR, is amended to read:

§28.59. Surfperch.

(a) For purposes of this Section, the term “surfperch” refers to all species of the family Embiotocidae, in any combination.

~~(a)~~ (b) Open season and areas: Open all year, except surfperch of the family Embiotocidae, with the exception of shiner surfperch (*Cymatogaster aggregata*), may not be taken or possessed by a person in San Francisco Bay and San Pablo Bay between April 1 and July 31, inclusive. Shiner surfperch (*Cymatogaster aggregata*) are exempt from this seasonal closure and may be taken and possessed up to their daily bag limit in these areas during the closure period.

~~(b)~~ Limit: Five in any combination of species (includes all members of the family Embiotocidae), except that the daily bag limit for shiner surfperch is twenty.

~~(c)~~ Daily bag limits.

(1) In San Francisco Bay and San Pablo Bay, the aggregate limit is five surfperch, not including shiner surfperch. For all other areas, the aggregate limit is 20 surfperch, not including shiner surfperch. Not more than 10 surfperch may be of any one species.

(2) The special limit for shiner surfperch is 20, which may be taken or possessed in addition to the overall daily bag limit of 20 finfish defined in subsection 27.60(a) and the special limits defined in subsection 27.60(b).

~~(e)~~ (d) Minimum size: redbtail surfperch, ten and one-half inches total length. All other surfperch, none.

NOTE:

Authority cited: Sections 200, 202, 205, 215 and 220, Fish and Game Code. Reference: Sections 200, 202, 205, 206, 215 and 220, Fish and Game Code.